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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,350	03/06/2002	Stefan Wilhelm	LINDE-581	7250

23599 7590 02/26/2003

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EXAMINER

ATKINSON, CHRISTOPHER MARK

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/09/350

Applicant

W:helm

Examiner

Atkinson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12/4/02
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7 20) ☐ Other: \_\_\_\_\_

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***Response to Amendment***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6 and 8-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by applicant cited reference Walter et al. (WO 99/11990). It has been held that the recitation that an element is "capable of" (i.e. can) performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. The "whereby" clause is considered to be "[l]anguage that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure [and therefore] does not limit the scope of a claim or claim citation". Therefore, the above "whereby" clause is considered to be statement of intended use and are not given any patentable weight. Furthermore, if applicant believes the whereby clause further limits the claim, the follow 35 U.S.C. 112, second paragraph is given.

***Claim Rejections - 35 USC § 112***

Claims 1-11 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being

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incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: the device/element to compensate the thermally produced changes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The below rejection also includes the claim number if the “can” limitation is given weight.

Claim 17 is rejected under 35 U.S.C. § 103 as being unpatentable over Walter et al. The plate (37) being triangular is considered to be an obvious design choice for size, space and weight considerations which does not solve any stated problem or produce any new and/or unexpected result.

Claims 3-5 and 10-16 are rejected under 35 U.S.C. § 103 as being unpatentable over Walter et al. in view of Thompson et al.

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The device of Walter et al. discloses all the claimed features with the exception of moving above its center of gravity, more than one heat exchanger, common connecting line and the securing means has two axis of rotation

The patent of Thompson et al. discloses that it is known to have more than one heat exchanger being movable above its center of gravity, the securing means has two axis of rotation and a common connecting line for repair and inspection of the heat exchanger and for commonly plumbing the heat exchangers together. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Walter et al. more than one heat exchanger being movable above its center of gravity, the securing means has two axis of rotation and a common connecting line for repair and inspection of the heat exchanger as disclosed in Thompson et al. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have more than one row, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claims 1-16 are rejected under 35 U.S.C. § 103 as being unpatentable over the known prior art (Jepson type claim) in view of Thompson et al.

The known prior art (Jepson type claim) discloses all the claimed features with the exception of the heat exchanger being arranged movable, more than one heat exchanger, common connecting line and securing joints.

The patent of Thompson et al. discloses that it is known to have more than one heat

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exchanger being movable above its center of gravity, securing joints and a common connecting line for repair and inspection of the heat exchanger and for commonly plumbing the heat exchangers together. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the known prior art more than one heat exchanger being movable above its center of gravity, securing joints and a common connecting line for repair and inspection of the heat exchanger and for commonly plumbing the heat exchangers together as disclosed in Thompson et al. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have more than one row, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action and applicant's submission of an information disclosure statement under 37 CFR 1.97© with the fee set forth in 37 CFR 1.17(p) on 12/9/2002 also prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a) and MPEP § 609(B)(2)(I). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Atkinson whose telephone number is (703) 308-2603.



C.A.  
February 24, 2003

CHRISTOPHER ATKINSON  
PRIMARY EXAMINER